

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL.

IBLA 96-519

Decided May 20, 1999

Appeal from a Record of Decision and Finding of No Significant Impact of the Jarbidge Resource Area Office, Bureau of Land Management, authorizing temporary nonrenewable livestock grazing in the Jarbidge Resource Area on an allotment-by-allotment basis when conditions established in the Environmental Assessment have been met or exceeded. EA #96073.

Affirmed.

~~Statement of National Environmental Policy Act of 1969: Environmental Statements~~
Statement of Environmental Quality: Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

2. Environmental Quality: Environmental Statements

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

3. Federal Land Policy and Management Act of 1976: Wilderness—Grazing and Grazing Lands—Wilderness Act

The decision to authorize temporary nonrenewable livestock grazing within the Jarbidge Resource Area will be affirmed where the record establishes that the authorization is consistent with grazing regulations at 43 C.F.R. § 4130.6-2 and the applicable

land use plan, and where certain lands are excepted or excluded from the EA/ROD. These include all Wilderness Study Areas, Areas of Critical Environmental Concern and other lands under special designations; scheduled rest pastures in intensely managed allotments; lands managed under current fire rehabilitation plans; and riparian areas subject to specific management.

APPEARANCES: Pamela J. Marcum, Boise, Idaho; Edward B. Zukoski, Esq., Boulder, Colorado, and Laird J. Lucas, Esq., Boise, Idaho, Land and Water Fund of the Rockies, for Committee for Idaho's High Desert and Idaho Watersheds Project; Kenneth M. Sebby, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Committee for Idaho's High Desert and Idaho Watersheds Project (Appellants) 1/ have appealed a Record of Decision/Finding of No Significant Impact (ROD/FONSI), issued on June 14, 1996, by the Jarbidge Resource Area Manager, Bureau of Land Management (BLM), Idaho, authorizing temporary nonrenewable livestock grazing in the Jarbidge Resource Area on an allotment-by-allotment basis when the conditions established within Environmental Assessment (EA) #96073 have been met or exceeded. The June 14 Decision concluded that the authorization of temporary nonrenewable grazing, when stipulated conditions were met, would not have significant impacts on the environment and that, therefore, preparation of an environmental impact statement (EIS) was not required pursuant to section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1994). That finding of no significant impact (FONSI) was based on the EA prepared to address the proposed authorization and specific stipulations and conditions of approval included within the ROD which are to be fulfilled prior to approval of authorization of temporary nonrenewable grazing.

According to the EA, the issue of temporary nonrenewable forage allocation in the Jarbidge Resource Area has not been previously considered from an environmental perspective and was not analyzed in the 1985 Jarbidge Proposed Resource Management Plan/Final Environmental Impact Statement. For that reason, EA #96073 states:

[T]his environmental assessment will serve to meet the NEPA requirement. This document will not address permanent increases

1/ Frank Bachman, Simplot Livestock Company, Three Creek Ranch, Buck Creek Ranch, and Dickshooter Cattle Company, were granted Intervenor status by the Board on Jan. 6, 1997. They are Permittees on land within the Jarbidge Resource Area, and object to modification or reversal of the protocol for the issuance of temporary nonrenewable use established by the ROD. (Intervenors' submission of Aug. 19, 1996, at 2.)

in forage allocations, as projected in the 1985 RMP/EIS, that may result from improved management and stewardship. The present EA only considers temporary forage surpluses that recur at irregular but elevated levels.

(EA at 1.) Certain lands within the Jarbidge Resource Area are excepted or excluded from consideration for the expanded grazing authorizations included within the EA. These excluded areas encompass all Wilderness Study Areas (WSA's), Areas of Critical Environmental Concern (ACEC's), and other lands under special designations, such as scheduled rest pastures in intensely managed allotments, lands managed under fire rehabilitation plans, and riparian areas subject to specific management stipulations in the grazing permit. (EA at 2.)

The Jarbidge Resource Area is located in T. 5 S. through T. 16 S., R. 4 E. through R. 15 E., Boise Meridian, T.F. Elmore and Owyhee Counties, Idaho. The Resource Area encompasses 1,567,368 acres of public land, along with several thousand acres of state and private lands, intermingled throughout south-central Idaho, with the Snake River as its northern boundary, the Bruneau River as its western boundary, Salmon Falls Creek as its eastern boundary, and a line south of the Nevada State Line as its southern boundary. (EA at 2.) Significant natural and cultural resources found within the Resource Area include the Snake River, Salmon Falls Canyon and Reservoir, C.J. Strike Reservoir, 51.2 miles of the Oregon Trail, the Snake River Birds of Prey Area, the Jarbidge and Bruneau Rivers, the Hagerman Fossil Beds, and two state parks and one National Park Service monument park (Bruneau Dunes State Park, Three Island Crossing State Park and the Hagerman Fossil Horse Quarry monument park). The city of Glenn's Ferry and the town of Hammett are across the Snake River on the north side. The Saylor Creek Gunnery Range, a U.S. Air Force training area, is also within the Resource Area. Id.

The proposed action was considered by the Jarbidge Resource Area Manager to address requests by grazers to make beneficial use of surplus available forage resulting from one or more of the following conditions: (1) seasonably lower mean temperatures and higher mean precipitation preceding the active growing season, leading to the expectation of greater forage productivity in the coming year; (2) additional rangelands made accessible to livestock use by the construction/implementation of such range improvements as pipelines, livestock waters, fencing, and vegetative manipulations; (3) seedings following fires that have replaced indigenous plant communities with highly adaptable, grazing-tolerant exotic grasses; (4) management strategies that periodically provide complete growing season rest from grazing, resulting in a gradual increase in vigor and forage productivity; and (5) market factors that influence the livestock industry by causing fluctuations in both livestock numbers and the primary production that sustains them. (EA at 1.)

In general, as noted above, the proposed action approved by the Jarbidge Resource Area Manager addresses permittee requests for extended/

expanded grazing authorizations for one or both of the following purposes: (1) grazing use in excess of authorized grazing preference, and (2) grazing use outside or beyond the permitted use season. (EA at 1.) Applicable grazing regulations provide that nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, providing this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. 43 C.F.R. § 4130.6-2.

The Appellants challenge the EA/ROD claiming that BLM has violated the compliance standards of NEPA, 43 U.S.C. § 4332(2)(C) (1994), because the EA "fails to take a 'hard look' at the impacts of the proposed action." (Statement of Reasons (SOR) at 1.) Appellants assert that:

The BLM has prepared a document that fails to meet these standards. The EA supplies an unconvincing statement of reasons for a determination that the alternative will have no significant effects. The agency identified some of the relevant areas of environmental concern, but the agency cannot be said to have taken a "hard look" at the environmental risks associated with this action. Because the EA supplies an unconvincing statement of reasons for a determination that the preferred alternative will have no significant effects, and because the EA has not taken a "hard look" at the impacts of authorizing Temporary Nonrenewable Use on the allotments of the Jarbidge Resource Area, the EA does not meet the minimum requirements set by NEPA and the implementing regulations for a legally valid environmental assessment.

(SOR at 1.)

More specifically, Appellants claim that the EA fails to take a "hard look" at the impacts of the proposed action on recreation. Appellants contend that Jarbidge and Bruneau Rivers are candidate wild and scenic rivers and are extremely popular rivers for white water floating in Idaho. They contend that seven allotments which have received authorization for temporary nonrenewable grazing in the last 10 years border on these two river corridors. They also argue that BLM wrongly concludes that the proposed action will not impact water quality, wetlands/riparian areas, or the proper functioning of watersheds as they support recreational activities. (SOR at 2.) In this regard, Appellants contend that the EA fails to analyze the impacts of the proposed action on hunting of upland game birds and fishing for Redband trout. Id. Appellants also claim that the EA fails to consider the effect of temporary nonrenewable grazing on WSA's and the impact that grazing may have on these areas' suitability for wilderness status. (SOR at 3.)

In addition to recreational impacts, Appellants claim the EA does not take a hard look at the impacts of the proposed action on wildlife. Appellants claim the EA is inadequate in its analysis of the impacts on

sage grouse, migratory songbirds, and antelope, for example. Id. A third area of concern with the EA cited by Appellants is its examination of the impacts on fisheries and aquatic species. Appellants claim the bull trout, Redband trout, and Bruneau Snail populations will be impacted because two allotments within the Jarbidge Resource Area (Poison Creek and Diamond A allotments) drain into the East Fork Jarbidge River and Bruneau River. They further claim that the impact on these species has not been addressed. (SOR at 3-4.)

Appellants contend that the EA also fails to take the required "hard look" at the impacts of the proposed action on native plant communities. For example, Appellants claim that native vegetation impacts are not adequately analyzed in the EA and that site specific impacts for specific species are not addressed in the context of temporary nonrenewable livestock grazing. (SOR at 5.) As an example of this deficiency, Appellants contend that the EA ignores the current state of scientific knowledge of microbiotic crusts and the effect of livestock grazing on these microorganisms. Moreover, Appellants argue that the EA contains no information on whether current livestock practices are meeting land use plan objectives for the area. Id.

As a fifth concern, Appellants assert that the EA fails to take a hard look at the impact of temporary nonrenewable grazing on rangeland health, including watersheds, ecological processes, water quality, and habitats. (SOR at 6.) Appellants urge that the EA does not adequately address these issues and that "[t]he EA embarks on its own separate course of pursuing maximization of grass eaten by livestock in the JRA, while disregarding agency mandates for rangeland health and the [Federal Land Policy and Management Act of 1976] multiple use mandate for management of public lands." Id.

Appellants claim that economic impacts are likewise not considered in the EA. They argue that the EA does not analyze impacts of the proposed action on recreational outfitters and the hunting and fishing public, as well as photography, hiking, birdwatching, and cultural, spiritual, and other uses which contribute significantly to the local economy. (SOR at 7.) Moreover, Appellants contend the EA fails to consider and adequately disclose the impacts of the proposed action. Appellants contend that cumulative impacts of temporary nonrenewable grazing on top of regular grazing use are not discussed, and that the impact of 213 miles of new pipelines, wells, and spring development, 149 miles of new fence, and 3,300 acres of prescribed burns have not been considered in the context of the proposed temporary nonrenewable grazing. (SOR at 8.)

Finally, Appellants claim the EA violates the "multiple use" mandate of Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1704 (1994). Appellants urge that "[t]he EA does not make a reasoned and informed decision that the benefits of the additional TNR [temporary nonrenewable] grazing on top of existing authorized grazing in each allotment outweigh the costs." (SOR at 8.) Furthermore, Appellants claim the EA does not demonstrate a need for the proposed action. They argue that the present method

of application and single-case consideration for temporary nonrenewable grazing is adequate and the proposed action is simply not justified. (SOR at 9.)

While BLM filed no answer in this case, its Response to Appellants Petition for Stay (Response) articulated its view that

the purported reasons stated by Appellants are unsubstantiated opinion and conjecture not supported by the record and are at best mere disagreement with BLM's decision. The history, background, and bases of BLM's Record of Decision to authorize Temporary Nonrenewable livestock grazing in the Jarbidge Resource Area on an allotment by allotment (case by case) basis when certain conditions (set forth in EA # 96073) have been met or exceeded is amply and fully set forth in Environmental Assessment # 96073.

(Response at 2.)

BLM's Response states that Appellants' characterization of the Resource Area Manager's Decision "as a 'blanket authorization' o[f] TNR use in 1.5 million acres of the Jarbidge Resource Area is a mischaracterization." (Response at 3.) The BLM Response states that individual grazing decisions necessarily will be made on a specific allotment-by-allotment or case-by-case basis when the criteria analyzed in EA #96073 have been met or exceeded. (Response at 3, citing EA Title Page, FONSI, and ROD at 1.) The BLM Response explains that the EA itself, on its second page, specifically states:

Certain lands within the Jarbidge RA are excepted or excluded from this EA. These include all Wildemess Study Areas (WSA's), Areas of Critical Environmental concern (ACEC's) and other lands under special designations; scheduled rest pastures in intensely managed allotments; lands managed under current fire rehabilitation plans; and riparian areas subject to specific management stipulations in the grazing permit.

(Response at 3, quoting EA at 2.) BLM contends that Appellants' references and arguments which include these "excluded" lands are misplaced. Id. More importantly, BLM asserts, it is BLM, and not Appellants, that "address the projected impacts fully * * * in its decision process." (Response at 3.) According to BLM, Appellants merely assume, without support, that environmental degradation is likely. Id.

BLM's Response states that the decision reached by BLM and the detailed EA "completely analyzes BLM's action and reflects compliance with all legal requirements for that decision." (Response at 4.) The BLM Response urges that

Appellants merely state their unsubstantiated opinion and conjecture disagreeing with BLM's decision without any support in the

record or pointing to any violation of law or regulation on the part of the BLM in reaching its decision and/or any evidence of unreasonable, arbitrary or capricious acts by the BLM which would support overturning the decision reached by BLM.

Id. The Response further states: "It is clear that Appellants disagree with BLM's decision but that is not the standard Appellants are required to meet." Id. Finally, Respondent BLM states that the public's interests are fully analyzed in the BLM's Decision and EA and that the activity is consistent with the land use plan for public lands in the Jarbidge Resource Area and with the grazing regulations. (Response at 5.)

Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (1994), requires Federal agencies to prepare an EIS for "major federal actions significantly affecting the quality of the human environment." In order to determine whether a Federal action will have a significant environmental impact, an agency first prepares an EA. 40 C.F.R. §§ 1501.3, 1501.4(c).

[1, 2] This Board has stated clearly that a determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review, or hard look, at environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination that no significant effects will occur is reasonable in light of the environmental analysis. Southern Utah Wilderness Alliance, 140 IBLA 341, 348 (1997); The Ecology Center, Inc., 140 IBLA 269, 271 (1997); Blue Mountains Biodiversity Project, 139 IBLA 258, 265-66 (1997); see also Sierra Club Legal Defense Fund, Inc., 124 IBLA 130, 140 (1992); Southern Utah Wilderness Alliance, 122 IBLA 334, 338 (1992), and cases cited therein.

A party challenging a ROD/FONSI, based on an underlying EA, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. The ultimate burden of proof is on the challenging party. G. Jon and Katherine M. Roush, 112 IBLA 293, 298 (1990); In Re Blackeye Timber Sale, 98 IBLA 108, 110 (1987). Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal. Committee for Idaho's High Desert, 139 IBLA 251, 257 (1997); Oregon Natural Resources Council, 139 IBLA 16, 22 (1997); Sierra Club, Toiyabe Chapter, 131 IBLA 342 (1994).

BLM is required to manage public lands for "sustained yield." 43 U.S.C. § 1732(a) (1994). This means that BLM must achieve and then maintain in perpetuity a "high level annual or regular periodic output of the various renewable resources" on such lands, including wildlife. 43 U.S.C. § 1702(h) (1994). BLM is also required to manage public lands for "multiple use." 43 U.S.C. § 1732(a) (1994). This means that "BLM must provide for a harmonious and coordinated management of the various

resources [on the public lands] without permanent impairment of * * * the quality of the environment." See Haines Borough Assembly, 145 IBLA 14, 20 (1998).

The EA upon which the FONSI is predicated in this case states that temporary nonrenewable livestock grazing will be authorized under the Proposed Action on an allotment-by-allotment basis when the following considerations have been met or exceeded:

- late-spring/early summer temperatures are at normal or below normal and soil moisture content is higher than the annual mean, leading to the reasonable expectation that forage production will be above normal in the coming growing season.
- utilization studies and clipped plot comparisons clearly indicate an annual surplus of available forage.
- the requested use will not occur in an intensely managed allotment on a pasture or unit that has been scheduled for rest in that grazing year.
- the cumulative utilization level on seeded ranges will be less than 60 percent of the current year's production for introduced forage species and less than 50 percent on native forage components.
- temporary, nonrenewable grazing permits/licenses may be issued if the conditions specified in 43 CFR 4130.6-2 are met, i.e., forage is temporarily available, use is consistent with multiple-use objectives, use does not interfere with existing livestock operations, and consultation, cooperation, and coordination with affected permittees/lessees, the state, and the interested public has occurred.
- tangible benefits can be readily demonstrated for both the applicants and the managing agency (e.g., reduction of fine fuels to decrease fire danger).
- the areas where TNR use will occur are preponderately seeded areas resulting from fire rehabilitation or ranges dominated by annual grasses and forbs. Native plant communities, especially if they are not in high-seral condition classes, should not be considered for TNR use.
- temporary, nonrenewable authorizations shall not be the basis for recurrent or renewed annual applications in succeeding years.
- the checklist of guidelines that is appended to this document will be completed by RA staff prior to TNR use approval.

-temporary, nonrenewable use will not be considered for specific areas within pastures that fall within special designation or management areas as described in the Need for Proposed Action section.

(EA at 13-14.) This section of the EA explains that the EA does not address permanent increases in forage production that have accrued to the Resource Area's total carrying capacity because of fire rehabilitation or management prescription. It explains that when permanent forage surpluses are available as validated by monitoring studies, increased allocations to the preference may be considered as a separate management option. (EA at 14.) This section of the EA also recognizes that "[t]he proposed action will require elevated levels of use supervision, monitoring, and field inspections," and related that "[f]inal inspections should be conducted when the livestock permanently exit the allotments in order to document cumulative use levels." Id.

The EA examines the environmental impacts of the Proposed Action in some detail. First, the EA recognizes that certain critical elements are either not present or are not impacted by the Proposed Action or any alternative. These include cultural resources, floodplains, hazardous or solid waste, prime farm lands, water quality, wetlands/riparian zones, wild and scenic rivers, and global climactic change. (EA at 15.) The EA then states that specific pastures within allotments that contain designated Wilderness or WSA's, planned or seasonal wildlife closures, and lands affected by riparian grazing restrictions contained in special stipulations to the individual grazing permits, are exempted from this analysis because those pastures would not be considered for temporary nonrenewable grazing authorizations. Id. This section also states that no Native American religious shrines or sites have been identified which could be affected by the Proposed Action or one of the alternatives, and that no Threatened or Endangered Species (plant or animal) will be affected by the Proposed Action. Id. In addition, this section notes that a checklist appended to the EA will be employed to assure that each of these elements receives appropriate attention. Id.

The EA examined environmental impacts of the Proposed Action and included an explanation of BLM's commitment to only consider temporary nonrenewable use on those pastures which contain a preponderance of exotic forage species: either lands invaded by annual bromes which can provide nutritious seasonal or ephemeral forage, or lands reseeded after fire to persistent and aggressive introduced perennials. The Proposed Action further provides that under any conditions, the utilization levels for the plant communities described will not exceed 60 percent of the current year's production and 50 percent of current year's production for any native components. (EA at 15.)

In explaining the strategy of the Proposed Action, the EA states that most temporary nonrenewable use will be made during the fall or winter months following the normal grazing season when livestock are widely

dispersed and well distributed because of cooler temperatures and the absence of insects. (EA at 18.) It is noted that the wheatgrasses that have been introduced in the Resource Area constitute most of the late season forage that generally have longer growing seasons than native forage species, and so are expected to have a greater availability to livestock. Id. The EA further states that some temporary nonrenewable grazing could also be authorized in the spring when opportunistic annual bromes and other species exhibit their most aggressive growth. Such extra seasonal growing strategies have the advantage of presenting introduced forage when native plants are in a dormant or reduced growth cycle. (EA at 18.)

The EA reviews the impact of the Proposed Action and approval of temporary nonrenewable use on wildlife, reptiles, upland game, nongame species and cryptobiotic crusts, as well as sensitive animal species, sensitive plant species, range resources and soil, water and air. (EA at 18-19.)

In examining the impact of the Proposed Action on wildlife, the EA finds that while removal of excess forage by domestic livestock could reduce the available food source for indigenous ungulates, nonmigratory birds, lagomorphs, and small rodents, the authorization process, which requires careful consideration of the removal of vegetative material needed for food and other purposes, would ensure the negative impacts for wildlife are not significant. (EA at 18.) In examining the impact of the Proposed Action on reptiles, the EA finds that the areas targeted for temporary nonrenewable grazing, i.e., lands where disclimax plant communities have displaced the original components, are not suited to serve as primary habitat for reptiles. For this reason, the EA finds, the areas serving as primary reptile habitat within the Resource Area "will not be seriously affected by the proposal or its implementation." Id. Similarly, the impact of temporary nonrenewable grazing on upland game has been found not to affect this resource to a degree that is notable. In making that determination, the EA finds that the foraging and nesting habitat or cover for upland game species does not extend into the "artificial" plant communities primarily affected by this proposal. Id.

The EA likewise examines the impact of the Proposed Action on nongame species. The assessment determines that almost all of these animals prefer habitat that is represented by native constituents instead of the monocultural stands addressed in this proposal. (EA at 18.) For this reason, the EA finds that nongame birds and animals will not be adversely affected by this action. Id. Cryptobiotic crusts and the possible impact of implementation of the Proposed Action on these crusts are also examined. Because these crusts are most notable on native grasslands in high seral conditions, rather than the monocultural rangelands likely subject to requests for temporary nonrenewable grazing, these crusts are not expected to be damaged by livestock grazing or associated trampling. Equally important, use under the Proposed Action will occur in seasons of the year (primarily fall and winter) when cryptobiotic crusts are least vulnerable to damage. Id.

Sensitive plant and animal species were reviewed as well. However, the stipulations which manage the approval process within the Proposed Action direct that on pastures where concentrations of listed plants and animal species are found and potential conflicts exist, temporary nonrenewable grazing authorizations may not be made. (EA at 19.) This decision regarding sensitive plants and animals is consistent with the principles of sustained yield and multiple use, which ensure range resources are managed within a pragmatic and achievable framework. Id.

The effects of implementing the Proposed Action on soil, water and air within the Resource Area are likewise considered. Impacts from trampling the soil such as diminished protection of the surface from precipitation events like rain, runoff, and other overland flow are mitigated by assuring the dispersion and distribution of livestock. (EA at 19.) It has been determined that water quality should not be affected because the majority of the allotments water off of livestock pipelines and many of the allotments have no live surface flowing waters or perennial streams. Id. Air quality has also been found not to be affected. Id.

The EA considers three separate alternatives to the Proposed Action. Alternative 1 would authorize temporary, nonrenewable grazing only on ranges dominated by annual grass plant communities such as cheatgrass or by exotic perennials such as crested wheatgrass planted after fire, in which the native components are absent or seriously diminished. Alternative 2 is the no-use alternative. Under this alternative, the authorized officer would deny all requests and applications for temporary use. Alternative 3 would consider all applications for temporary, nonrenewable grazing use on a "single case" basis. Under this alternative, the Resource Area staff would be dispatched to the allotment concerned to determine surplus usable forage, livestock/wildlife conflicts, user benefits, and other relevant factors. A decision to grant or reject the request would be based on recommendations of the Resource Area staff and relevant environmental considerations. (EA at 14-15.)

The three alternatives not selected were evaluated with regard to their environmental impacts before the Proposed Action was selected. Under Alternative 1, no authorization would be allowed for pastures containing native components. Selection of Alternative 1 would disallow consideration of areas that contained contiguous communities of native and introduced or invaded plants, as in the Proposed Action. A much lesser total area thus could be considered for additional grazing under Alternative 1. The impacts of this alternative would be very similar to those of the Proposed Action, although without the flexibility of action preserved to the Resource Area Manager, and would result in a potential program of substantially reduced scale, when compared to the Proposed Action. (EA at 19-20.)

Under Alternative 2, the no-use alternative, no temporary nonrenewable grazing would be permitted. The impact of selecting this alternative, according to the Resource Area Manager, would be as follows:

Livestock operators on public lands would suffer a profound economic disadvantage. Opportunities to convert primary production to animal products with minimal environmental consequences would be diminished. Some additional vegetative material would be available for reintegration into the ecosystem through nutrient cycles and detritus food chains. Use of TNR as a management option or application for specific resource needs, such as fire control, would be unavailable.

(EA at 20.)

Alternative 3 would only consider temporary nonrenewable grazing authorization on a single case basis, thus not considering information gained from other similar requests. According to BLM, this alternative would ultimately lead to a greater cumulative work effort by the Resource Area staff since the considerations of the Proposed Action would have to be considered on a redundant and repetitive schedule. In the EA, the Resource Area Manager found that adopting this alternative would create uncertainty in the marketplace and would introduce an element of inconsistency to the process. (EA at 20.) The EA found that impacts to other resources under this alternative would be similar to the Proposed Action although on a proportionately reduced scale. Id.

Despite the analysis described above, Appellant argues that the EA fails to adequately assess impacts of the Proposed Action and fails to consider alternatives and mitigation. The Appellant criticizes the EA for being inaccurate, subjective, and overly generalized.

Our review of the BLM Decision in this case and the attendant EA reflects that BLM took a "hard look" at the environmental consequences of the action; identified the relevant areas of environmental concern; carefully considered the available alternatives and determined the least harmful alternative to the environment consistent with the purpose and need for the proposed action; made a reasonable finding that the impacts studied are insignificant; and with respect to any potentially significant impacts, proposed mitigating measures that would reduce the potential impact to insignificance. See Southern Utah Wilderness Alliance, supra at 350; Oregon Natural Resources Council, supra at 186.

Impacts were, in fact, analyzed and are discussed at length in the EA, as detailed above. Some of the impacts are anticipated as being beneficial to vegetation and wildlife values. In addition to a Proposed Action and the no-action alternative, the EA also considered two other alternatives. The impacts associated with these alternatives are set out in the EA and described above. The Appellant is incorrect in its allegation that mitigation is not adequately considered in the EA. The EA reflects a reasonable assessment of the Proposed Action and its anticipated impacts and reasonably supports the conclusion that those impacts will be insignificant and nonimpairing, when the conditions for approval described in the Proposed

Action are applied. The Appellant's objections and criticisms are in the nature of disagreements with BLM's determination and do not demonstrate errors of law or fact.

[3] Furthermore, the Proposed Action is consistent with 43 C.F.R. §§ 4130.6-2 and 4130.6-3. Section 4130.6-2 provides that the authorized officer may specify other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. Section 4130.6-3 provides that following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditions of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives. For this reason, the Resource Area Manager's decision to authorize temporary nonrenewable livestock grazing within the Jarbidge Resource Area under the conditions set forth in the Proposed Action is appropriate where the record establishes that the authorization is consistent with grazing regulations at 43 C.F.R. §§ 4130.6-2 and 4130.6-3, and where certain lands subject to other specific regulation are excepted or excluded from the EA/ROD, as is the case here. These include WSA's, ACEC's, and other lands under special designations; scheduled rest pastures in intensely managed allotments; lands managed under current fire rehabilitation plans; and riparian areas subject to specific management restrictions. See EA at 2.

Equally significant, the Resource Area Manager's June 14, 1996, Decision is consistent with the multiple use and sustained yield requirements imposed upon BLM managers by Title 43, U.S. Code. See Haines Borough Assembly, supra at 20-21.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

